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10/627,547	07/25/2003	David L. Bauer	5053.00009	3536

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EXAMINER	
PATEL, JAGDISH	

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/627,547	<b>Applicant(s)</b> BAUER ET AL.	
	<b>Examiner</b> JAGDISH PATEL	<b>Art Unit</b> 3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-15,17-30 and 32-65 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-15,17-30 and 32-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/14/07</u> | 6) <input type="checkbox"/> Other: ____  |

### **DETAILED ACTION**

1. This communication is in response to amendment filed 4/6/05.

#### **Response to Amendment**

2. Claims 1, 15, 27, 33, 54, 56 57 and 58 have been amended and new claim 62-69 have been added.

#### **Response to Arguments**

3. Applicant's arguments with respect to claims 1, 3-15, 17-30, and 32-61 have been considered but are moot in view of the new ground(s) of rejections.

#### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 62, 64-68 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The newly presented claims recite (negative) limitations “straight non-proxy bids”, “..does not include a live-in person auction”, and “..operate without a human auctioneer”. The specification fails to provide written description of this limitation

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and therefore fails to comply with the written description requirement. Citing MPEP

2173.05(i):

Any negative limitation or exclusionary proviso must have basis in the original disclosure. If alternative elements are positively recited in the specification, they may be explicitly excluded in the claims. See *In re Johnson*, 558 F.2d 1008, 1019, 194 USPQ 187, 196 (CCPA 1977) ("[the] specification, having described the whole, necessarily described the part remaining."). See also *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983), *aff'd mem.*, 738 F.2d 453 (Fed. Cir. 1984). The mere absence of a positive recitation is not basis for an exclusion. Any claim containing a negative limitation which does not have basis in the original disclosure should be rejected under 35 U.S.C. 112 first paragraph, as failing to comply with the written description requirement. Note that a lack of literal basis in the specification for a negative limitation may not be sufficient to establish a *prima facie* case for lack of descriptive support. *Ex parte Parks*, 30 USPQ2d 1234, 1236 (Bd. Pat. App. & Inter. 1993). See MPEP § 2163 [http://www.uspto.gov/web/offices/pac/mpep/documents/2100\\_2163.htm](http://www.uspto.gov/web/offices/pac/mpep/documents/2100_2163.htm) - § 2163.07(b) for further details.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 33 and 54 are rejected under 35 U.S.C. 102(a) as being anticipated over Johnson, Richard C. (WO 03/027806A2) (hereafter, referred to as Johnson).

Per claims 33 and 34 Johnson teaches an online auction system for enabling bidding over a computer network by remotely located bidders utilizing computing devices for receiving information to be provided to a bidder and transmitting bid information of the bidder, (refer to abstract, "two phase auction") comprising:

one or more servers configured to provide an auction service having 1) a preliminary bidding component conducted over the computer network, the preliminary bidding component offering for auction at least one item, the item being offered for a pre-established duration of

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time, the preliminary bidding component resulting in a final preliminary bid for the at least one item of items;

[(p. 4 l 25+ - p. 6 l 5) a remote server which is configured to conduct a two phase auction, refer to description of the first phase which corresponds to the preliminary bidding component.]

and 2) a dynamic real-time auction component conducted over the computer network, beginning after closing of the preliminary bidding component upon expiration of the pre-established duration of time, the dynamic auction component offering for auction the at least one item from the preliminary auction component, the dynamic auction component defining a starting bid for the in the dynamic auction component based on the final preliminary bid from the preliminary bidding component, the dynamic auction component being configured to receive dynamic bids over the computer network and to apply the dynamic bids in real time,.

[(p. 4 l 25+ - p. 6 l 5) a remote server which is configured to conduct a two-phase auction, refer to description of the second phase which corresponds to the dynamic real-time auction component.].

Claims 54 correspond to claim 33 because the structure and functionality of the claimed system are not distinct from each other. Claim 33 is directed to an online auction while claim 54 is directed to online sale over a computer network. However, the structure of the claims is not distinct. Therefore same rationale of prior rejection as claim 33 also applies to claim 54. Note also that this comment also applies to all independent "system claims".

***Claim Rejections - 35 USC § 112***

Claim 69 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 69 recites displaying a geographic location of the bidder associated with the dynamic bid(s). However, there is nothing in the independent claim to support such a display. For example, claim 15 fails to specify where information concerning the geographic location is communicated to the auction server.

***Claim Rejections - 35 USC § 103***

7. Claims 1, 5, 6, 15, 19, 20, 29-30, 32 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson, Richard C. (WO 03/027806A2) (hereafter, referred to as Johnson) and further in view of officially taken notice (O/N).

Per claim 1, Johnson teaches an online auction system for enabling bidding over a computer network by remotely located bidders utilizing computing devices for receiving information to be provided to a bidder and transmitting bid information of the bidder, (refer to abstract, “two phase auction”) comprising:

one or more servers configured to provide an auction service having 1) a preliminary bidding component conducted over the computer network, the preliminary bidding component offering for auction a (plurality of items), each item being offered for a pre-established duration of time, the preliminary bidding component resulting in a final preliminary bid for (each of the plurality) of items;

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[(p. 4 l 25+ - p. 6 l 5) a remote server which is configured to conduct a two phase auction, refer to description of the first phase which corresponds to the preliminary bidding component.]

and 2) a dynamic real-time auction component conducted over the computer network, beginning after closing of the preliminary bidding component upon expiration of the pre-established duration of time, the dynamic auction component offering for auction each (of the plurality of) items from the preliminary auction component, the dynamic auction component defining a starting bid for each (of the plurality of items) in the dynamic auction component based on the respective final preliminary bid from the preliminary bidding component, the dynamic auction component being configured to receive dynamic bids over the computer network and to apply the dynamic bids in real time.

[(p. 4 l 25+ - p. 6 l 5) a remote server, which is configured to conduct a two phase auction, refer to description of the second phase which corresponds to the dynamic real-time auction component.].

Whereas, Johnson teaches the online auction system as recited in the instant claim he fails to disclose that the auction system is applied to a plurality of items. However, offering a plurality of items for auctions (simultaneously) over a communication network is old and well known in the art. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Johnson in view of this fact to modify Johnson because it would enable an auctioneer to offer a plurality of items thereby improving the efficiency and economy of the auction process.

Regarding claims 5 and 6: Johnson teaches countdown timer displayed on a screen of each of the ..bidder.. (see Figure 9).

Claim 15 recites underlying method performed by the apparatus claim 1.

Claims 19, 20 are rejected on similar ground as claims 5 and 6.

Regarding claims 29-30 and 32: all limitations of these claims have been addressed in view of claim 1 analysis and further in view of teaching by Johnson at Fig. 9 and description at p. 14 L 22 – p. 15 L 20.

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Regarding claim 63 it is inherent than in an auction wherein a plurality of bidders participate the bids are applied against one another.

8. Claims, 7-12, 21-26, 40, 50, 56 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson applied to claim 1 and further in view of the Official Notice.

Regarding claims 7-12, Johnson in view of O/N fails to teach, however, further Official Notice is taken that alerting bidder or potential customers for various upcoming events via various communication means such as electronic mail, instant message etc. is old and well known in the electronic commerce.

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to implement means for altering the bidders based on this Official Notice because this would allow more bidders to participate in the auction.

Method claims 21-26 correspond to system claims 7-12 respectively.

9. Claims 40 and 50: Johnson fails to teach offering the plurality of items for bid simultaneously, and the dynamic real-time auction component offering the items individually. However, offering a plurality of items simultaneously and offering items individually for sale over a computer network is old and well known and the examiner takes official notice of this feature.

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify Handler in view of the officially noticed facts to offer the plurality of items in various formats as matter of auctioneer's business decision.

10. Claims 56 and 59: recites computerized feature equivalent to "going once, going twice, gone" which is customary in the traditional auctions. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify Handler to configure the dynamic auction in Handler accordingly in order to alert the bidders of the impending closing of the auction.



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8. Claims 3, 4, 13, 14, 17, 18, 27, 28 34-39, 44-49, 55, 57, 58, 60 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson and Officially taken Notice as applied to claim 1 above, and further in view of Handler.

Claims 3, 4, 13-14 and 27-28: Johnson, fails to teach, however, Handler teaches that proxy bids are accepted during an auction (see proxy bidding process, p. 5 L 33-36).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Johnson in view of Handler because this would improve efficiency of the auction by allowing more bidders to participate because this would eliminate the need of the bidder to be physically present.

Method claims 17 and 18 correspond to system claims 3-4 respectively and are analyzed as such.

Claims 34-38 and 44-48 are inherently disclosed in Handler reference. For example, Handler teaches at p. 6 L 11 described various stages of the “integrated auction”. Note that the “live auction” commences after the closing of the “online auction” and that the additional proxy bids are only accepted after the conclusion of the live auction. Claims 44-48 are also analyzed accordingly because they correspond to claims 34-38 respectively.

Claim 39 and 49: Handler teaches first bidding format (proxy bidding) and the dynamic real-time auction component provides a different bidding format (see Integrated Auction Flow, p. 6).

Claim 55 and 58 : Johnson and O/N discloses this feature inherently because, if during the second stage (live auction stage) no higher bid than the starting bid established during the

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preliminary bidding stage is received the starting bid would be the highest bid and therefore a winning bid.

Claims 57: the dynamic auction component is configured to accept, for each of the plurality of the items, a dynamic bid greater than the final preliminary bid received for the respective item during the preliminary bidding component (inherent in the Handler apparatus because the objective of the second stage of the integrated auction is maximize price of the one more items offered in the auction).

Claims 60 and 61: refer to discussion of claim 57.

11. Claims 41 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of O/N as applied to claim 1 as analyzed above, and further in view of Walker (US 20060224497, Priority us-provisional-application US 60152119 19990902).

Johnson and O/N combined fail to teach, however, Walker (US 20060224497, Priority us-provisional-application US 60152119 19990902) teaches behavior of the bidders (bid increment) as a function of the time allotted between dynamic bids (see Summary).

It would be obvious to one of ordinary skill in the art at the time of applicant's invention to modify Johnson and O/N combination in view of Walker to decrease the time allotted between dynamic bids because this would influence the behavior of one or more bidders in an auction may influence another bidder's perception of the value of the item.

12. Claims 42-43 and 52-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of O/N as applied to claim 1 as analyzed above, and further in view of Peterson (CA 2329281), Publication 06/21/2002.

Claims 42-43 and 52-53: Johnson and O/N fails to teach that the real-time component is configured to provide, for each of the plurality of items, a matrix of selectable bid amounts for selection by a user. Peterson, in the same field of endeavor teaches buttons, which enable the

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bidders to select, bids from different adaptive (dynamic) bid increments in a dynamic auction.  
(see p.3 and 4).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Johnson and O/N by incorporating a matrix of selectable bid amounts as per teaching of Peterson because this would spur additional bidding activity in a dynamic auction environment because the bidder would be enabled to enter bids faster and accurately, where short time period is available to each bidder to select and enter the next bid vb.

### *Conclusion*

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAGDISH PATEL whose telephone number is (571) 272-6748.

The examiner can normally be reached on 800AM-630PM Mon-Tue and Thu.

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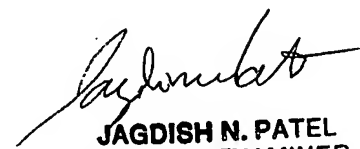
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **KRAMER JAMES A** can be reached on **(571)272-6783**. The fax phone number for the organization where this application or proceeding is assigned is 517-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jagdish N. Patel

(Primary Examiner, AU 3693)

5/13/07

 5/14/07  
**JAGDISH N. PATEL**  
**PRIMARY EXAMINER**